

MILBANK LLP  
Linda Dakin-Grimm (State Bar #119630)  
Mark Shinderman (State Bar #136644)  
Samir L. Vora (State Bar #253772)  
2029 Century Park East, 33rd Floor  
Los Angeles, CA 90067  
Telephone: 213-892-4404  
Facsimile: 213-629-5063  
Email: [Ldakin-grimm@milbank.com](mailto:Ldakin-grimm@milbank.com)

\*Additional counsel listed on signature page

*Pro Bono* Attorneys for Plaintiffs,  
Esvin Fernando Arredondo Rodriguez and A.F.A.J.

**UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

ESVIN FERNANDO ARREDONDO  
RODRIGUEZ, an individual AND A.F.A.J.,  
a minor, BY HER GUARDIAN *AD LITEM*,  
JEFFREY HAMILTON,

## Plaintiffs,

V.

UNITED STATES OF AMERICA,

**Defendant.**

Case No.: CV 22-02845-JLS-JC

**PLAINTIFFS' MOTION TO  
EXCLUDE TESTIMONY AND  
REPORT OF PROPOSED  
EXPERT JUNE HAGEN  
[DAUBERT]**

**Hearing Date:** March 29, 2024

Hearing Time: 10:30 a.m.

Judge: Hon. Josephine L. Staton

Courtroom: 8A

## TABLE OF CONTENTS

2	MEMORANDUM OF POINTS AND AUTHORITIES.....	1
3	I. INTRODUCTION.....	1
4	II. LEGAL STANDARD .....	1
5	III. ARGUMENT .....	3
6	A. The Rebuttal Reports Are Not Based on Sufficient Facts or	
7	Data .....	3
8	B. The Rebuttal Reports Are Not A Product of Reliable Principles	
9	or Methods .....	7
10	1. Dr. Hagen Fails to Show That She Properly Applied	
11	Professional Experience or Reliable Principles or	
12	Methods to Reach Her Conclusions .....	7
13	2. Dr. Hagen Failed to Engage with the Totality of the	
14	Evidence and Instead Only Considered the Evidence	
15	Favorable to Defendant's Position .....	9
16	IV. CONCLUSION .....	12

1  
2                   TABLE OF AUTHORITIES  
3  
4

	Page(s)
<b>Cases</b>	
<i>In re Bextra &amp; Celebrex Mktg. Sales Practices &amp; Prod. Liab. Litig.</i> , 524 F. Supp. 2d 1166 (N.D. Cal. 2007) .....	9, 10
<i>In re Canvas Specialty Inc.</i> , 261 B.R. 12 (C.D. Cal. 2001).....	2
<i>City of Pomona v. SQM N. Am. Corp.</i> , 750 F.3d 1036 (9th Cir. 2014).....	2
<i>Daubert v. Merrell Dow Pharms.</i> , 509 U.S. 579 (1993) .....	2
<i>EEOC v. Freeman</i> , 778 F.3d 463 (4th Cir. 2015).....	9
<i>Est. of Barabin v. AstenJohnson, Inc.</i> , 740 F.3d 457 (9th Cir. 2014).....	2
<i>GE v. Joiner</i> , 522 U.S. 136 (1997) .....	3
<i>Nat'l Fire Prot. Ass'n, Inc. v. Upcodes, Inc.</i> , 21 -05262, 2023 WL 6194385 (C.D. Cal. Sep. 7, 2023) .....	6
<i>Primiano v. Cook</i> , 598 F.3d 558 (9th Cir. 2010).....	2
<i>Santa Clarita Valley Water Agency v. Whittaker Corp.</i> , 18-06825, 2020 WL 6260015 (C.D. Cal. Sep. 16, 2020) .....	3
<i>Turner v. ThyssenKrupp Materials, N.A.</i> , 492 F. Supp. 3d 1045 (C.D. Cal. 2020).....	3
<i>United States v. Bazaarvoice, Inc.</i> , 13-00133, 2013 WL 3784240 (N.D. Cal. July 18, 2013).....	3
<i>United States v. Sandoval-Mendoza</i> , 472 F.3d 645 (9th Cir. 2006).....	2

1           **Statutes**

2	Fed. R. Civ. P. 26.....	2, 3
3	Fed. R. Evid. 702 .....	1, 2, 7, 9, 11
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

Defendant has proposed to offer rebuttal testimony from June Hagen (“Dr. Hagen”) in response to the employability assessments conducted by Plaintiffs’ vocational expert Mark Lieberman (“Mr. Lieberman”). Dr. Hagen’s testimony should be excluded from this case for two reasons. First, Dr. Hagen did not adequately prepare herself prior to writing her Rebuttal Reports (defined below), in failing to review relevant, available evidence. Thus, Dr. Hagen’s conclusions are not sufficiently supported by facts and data. Second, Dr. Hagen fails to show that she properly applied her professional experience or reliable principles or methods to reach her opinions in this case. The Rebuttal Reports contain only a single citation to authority from Dr. Hagen’s field of expertise and do not include any references to defined methods or principles. In deposition, Dr. Hagen admitted that she did not rely on methods or principles at all.<sup>1</sup> Moreover, after reviewing documents Defendant’s counsel had selected and sent her, Dr. Hagen relied solely upon the evidence that favored the Defendants, failing to engage with the evidence that opposed Defendant’s position. Such cherry-picking is routinely rejected by courts and further justifies excluding Dr. Hagen’s conclusions.

## II. LEGAL STANDARD

Under Federal Rule of Evidence 702 (“Rule 702”), expert opinion is admissible if:

(1) the witness is sufficiently qualified as an expert by knowledge, skill, experience, training, or education; (2) the scientific, technical, or other specialized knowledge will help the trier of fact to understand the

<sup>1</sup> The deposition of Dr. Hagen occurred on February 15, 2024. To date, Plaintiffs have not received a copy of the deposition transcript from the court reporter. See Declaration of Linda Dakin-Grimm in Support of Plaintiffs' Motion to Exclude Testimony and Report of Proposed Expert June Hagen ¶ 7. Because the transcript was not available by the Court's deadline for Daubert motions, Dkt. No. 51 at 2, Plaintiffs will file an amended Motion with citations to the deposition transcript when they receive the transcript from the court reporter.

1 evidence or to determine a fact in issue; (3) the testimony is based on  
2 sufficient facts or data; (4) the testimony is the product of reliable  
3 principles and methods; and (5) the expert has reliably applied the  
4 relevant principles and methods to the facts of the case.

5 Fed. R. Evid. 702. To determine whether an expert is sufficiently qualified, a court  
6 must examine whether the expert's qualifications and experiences are "relevant to  
7 the determination of the facts in issue." *In re Canvas Specialty, Inc.*, 261 B.R. 12,  
8 19 (C.D. Cal. 2001).

9 Once an expert is found to be qualified, a trial court must ensure that the  
10 testimony of the expert "both rests on a *reliable* foundation and is *relevant* to the  
11 task at hand." *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 579-80 (1993)  
12 (emphasis added). Testimony rests on a "reliable foundation" if it is rooted "in the  
13 knowledge and experience of the relevant discipline" while "testimony is relevant if  
14 the knowledge underlying it has a valid connection to the pertinent inquiry." *City of*  
15 *Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1043-44 (9th Cir. 2014) (citation and  
16 internal quotation marks omitted).

17 A court's primary concern is "the soundness of [the expert's] methodology."  
18 *Estate of Barabin v. AstenJohnson, Inc.*, 740 F.3d 457, 463 (9th Cir. 2014) (citation  
19 and internal quotation marks omitted). When assessing scientific expert opinion, a  
20 court may consider factors, such as "(1) whether the scientific theory or technique  
21 can be (and has been) tested, (2) whether the theory or technique has been subjected  
22 to peer review and publication, (3) whether there is a known or potential error rate,  
23 and (4) whether the theory or technique is generally accepted in the relevant  
24 scientific community." *United States v. Sandoval-Mendoza*, 472 F.3d 645, 655 (9th  
25 Cir. 2006) (citation and internal quotation marks omitted). These factors are not  
26 exhaustive, and a court may use its discretion "to decide how to test an expert's  
27 reliability as well as whether the testimony is reliable, based on the particular

1 circumstances of the particular case.” *Primiano v. Cook*, 598 F.3d 558, 564 (9th Cir.  
2 2010) (citation and internal quotation marks omitted).

3 Additionally, Federal Rule of Civil Procedure 26 governs parties’ disclosure  
4 obligations and outlines the requirements for a written report by a witness retained  
5 to provide expert testimony. Among other requirements, such a report must contain:  
6 “(i) a complete statement of all opinions the witness will express and the basis and  
7 reasons for them; (ii) the facts or data considered by the witness in forming them;  
8 [and] (iii) any exhibits that will be used to summarize or support them[.]” Fed. R.  
9 Civ. P. 26(a)(2)(B)(i)-(iii). “Th[is] duty to disclose is broad.” *United States v.*  
10 *Bazaarvoice, Inc.*, 13-00133, 2013 WL 3784240, at \*2 (N.D. Cal. July 18, 2013). In  
11 particular, “‘facts or data’ as used in Rule 26(a)(2)(B)(ii) is to ‘be interpreted  
12 broadly to require disclosure of any material considered by the expert, from  
13 whatever source, that contains factual ingredients.’” *Santa Clarita Valley Water*  
14 *Agency v. Whittaker Corp.*, 18-06825, 2020 WL 6260015, at \*1 (C.D. Cal. Sept. 16,  
15 2020) (quoting Fed. R. Civ. P. 26(a)(2)(B) advisory committee’s note to 2010  
16 amendment).

17 **III. ARGUMENT**

18 **A. The Rebuttal Reports Are Not Based on Sufficient Facts or Data**

19 Expert testimony must be “based on sufficient facts or data.” *Turner v.*  
20 *ThyssenKrupp Materials, N.A.*, 492 F. Supp. 3d 1045, 1048 (C.D. Cal. 2020)  
21 (citation and internal quotation marks omitted). When “there is simply too great an  
22 analytical gap between the data and the opinion proffered,” the expert opinion must  
23 be excluded. *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997).

24 Here, exclusion is warranted because Dr. Hagen failed to review sufficient  
25 facts or data prior to authoring her reports; indeed, she reviewed very little at all. Dr.  
26 Hagen’s *Vocational Evaluation and Rebuttal of Plaintiff Employability Assessment*  
27 *re: Esvin Fernando Arredondo Rodriguez* (the “Arredondo Rebuttal Report”) lists

1 just six documents in the report’s “Documents Reviewed” section. Arredondo  
2 Rebuttal Report at 1. Those documents, all of which were selected and provided to  
3 her by counsel, are (i) the two reports prepared by Plaintiffs’ experts on Mr.  
4 Arredondo; (ii) a psychological evaluation of Mr. Arredondo done by psychiatrist  
5 Amy Cohen, M.D., in June 2020; (iii) the transcript of Mr. Arredondo’s deposition;  
6 and (iv) Mr. Arredondo’s Responses to Defendant’s First Set of Interrogatories. *Id.*  
7 Similarly, Dr. Hagen’s *Vocational Evaluation and Rebuttal of Plaintiff*  
8 *Employability Assessment re:* [REDACTED] (the “A.F.A.J. Rebuttal  
9 Report” and, together with the Arredondo Rebuttal Report, the “Rebuttal Reports”)  
10 lists just 11 total documents in the “Documents Reviewed” section. A.F.A.J.  
11 Rebuttal Report at 1. Those documents are (i) four school records, including two  
12 academic transcripts and a [REDACTED]; (ii) the two expert reports produced by  
13 Plaintiffs’ counsel relating to A.F.A.J.; (iii) a psychological evaluation of A.F.A.J.  
14 done by Genero Rodriguez in June 2020; (iv) the transcript of A.F.A.J.’s deposition;  
15 and (v) A.F.A.J.’s treatment records from [REDACTED].  
16 *Id.*

17 Moreover, Dr. Hagen did not draw on her expertise to identify the relevant  
18 pieces of evidence. Instead, Defendant’s counsel—not Dr. Hagen—determined what  
19 materials Dr. Hagen reviewed. During her deposition, Dr. Hagen testified that she  
20 only reviewed the documents that Defendant’s counsel sent her. She did not request  
21 additional documents, and she made no follow-up requests for more information.  
22 Dr. Hagen thus did not review the other documents in this case relevant to Plaintiffs’  
23 experiences and injuries, including Plaintiffs’ respective sworn testimony that was  
24 admitted in their asylum case, the extensive record of what Defendant did to  
25 separated families like the Arredondos, any pleadings from this case, notes or  
26 transcripts of Plaintiffs’ various interviews, or any of the many other factual records  
27 produced in discovery.

1           Dr. Hagen also failed to conduct, or rely on, any significant academic research  
2 for her Rebuttal Reports, including any research on the vocational harms that may  
3 arise from a family separation<sup>2</sup> like the one that Plaintiffs experienced or from the  
4 mental conditions that Plaintiffs suffer from, including [REDACTED]. In fact, she merely  
5 assumed that the two plaintiffs did not suffer from [REDACTED] because Defendant's other  
6 proposed expert, Bennett Williamson ("Dr. Williamson"), told her so. Thus, she  
7 was wholly unprepared to make educated assessments about how Plaintiffs' mental  
8 injuries, including [REDACTED], would impact their earning capacity and vocational  
9 potential. For example, during her deposition, Dr. Hagen could not answer whether  
10 experts in her field had observed a negative correlation between [REDACTED] and earnings  
11 capacity.

12           Finally, further evidencing her inadequate preparation, despite relying on his  
13 conclusions, Dr. Hagen failed to review the reports of Defendant's own psychologist  
14 expert witness, Dr. Williamson. *See* Arredondo Rebuttal Report at 1; A.F.A.J.  
15 Rebuttal Report at 1. Dr. Hagen stated that she was told that Dr. Williamson's report  
16 had not been written by the time Dr. Hagen needed to submit her own report (even  
17 though the reports were produced on the same date), so she instead had an eight-  
18 minute phone call with Dr. Williamson to hear his opinions regarding both Plaintiffs.  
19 Dr. Hagen acknowledged during her deposition that Dr. Williamson's report could  
20 contain information that would cause her to change the conclusions in her report.  
21 Nevertheless, she did not make an attempt to obtain and read it at any point after it  
22 was authored.

23

24

---

25           <sup>2</sup> Plaintiffs presented significant evidence showing how numerous entities, including government officials,  
26 members of Congress, and private organization, explained and warned Defendant about the traumatic harm  
27 family separation causes its victims. *See, e.g., Plaintiffs' Memorandum of Points and Authorities in Support  
of Motion for Partial Summary Judgment* at 2-3, Dkt. No. 114-1. Dr. Hagen did not review any of this  
evidence.

1       Despite failing to review key pieces of evidence, Dr. Hagen made sweeping  
2 statements about what the evidence in the case *purports* to show. For example, in  
3 the Arredondo Rebuttal Report, Dr. Hagen disagrees with Mr. Lieberman's opinion  
4 that Mr. Arredondo's [REDACTED] will prevent Mr. Arredondo from seeking higher-paying  
5 employment, claiming that “[t]here is no evidence of [Mr. Arredondo] being harmed  
6 financially by his experience at the border.” Arredondo Rebuttal Report at 5. Not  
7 having made a complete review of “the evidence,” however, Dr. Hagen is not  
8 positioned to opine in this manner. Similarly, in the A.F.A.J. Rebuttal Report, Dr.  
9 Hagen purports to opine that A.F.A.J. could “begin Community College with ESL  
10 classes . . . which will improve her future earning capacity,” without any reference  
11 to a method or principle to support her assertion. She simply says: “[t]here is no  
12 reason [A.F.A.J.] would not be able to pursue a college education if given  
13 encouragement and guidance.” A.F.A.J. Rebuttal Report at 6. These unsupported  
14 generalizations are not proper expert testimony.

15       Dr. Hagen could not have made such statements had she actually reviewed all  
16 of the relevant evidence, especially the evidence pertaining to the impact of the  
17 injuries Plaintiffs sustained due to their forced separation at the border and  
18 subsequent detentions. At a minimum, Dr. Hagen should have reviewed: (i)  
19 Plaintiffs' prior sworn testimony; and (ii) the extensive body of recognized authority  
20 from the field of vocational rehabilitation regarding the relationship between  
21 negative mental conditions, including [REDACTED], and a person's earning capacity and  
22 vocational potential. Yet Dr. Hagen did not review any of these. Instead, she simply  
23 relied on Defendant's counsel to decide for her what documents she should review  
24 and conducted little, if any, independent research. In short, Dr. Hagen did not possess  
25 the knowledge and information needed to justify the broad conclusions she included  
26 in the Rebuttal Reports.

1           **B. The Rebuttal Reports Are Not a Product of Reliable Principles or**  
2           **Methods**

3           1. Dr. Hagen Fails to Show That She Properly Applied Her  
4           Professional Experience or Reliable Principles or Methods to  
5           Reach Her Conclusions

6           To be admissible, the expert's testimony must be "the product of reliable  
7           principles and methods, and the expert must appl[y] the principles and methods  
8           reliably to the facts of the case." *Nat'l Fire Prot. Ass'n, Inc. v. UpCodes, Inc.*, 21-  
9           05262, 2023 WL 6194385, at \*1 (C.D. Cal. Sept. 7, 2023) (citation and internal  
10          quotation marks omitted). To ensure reliability, the court must "assess the [expert's]  
11          reasoning or methodology, using as appropriate such criteria as testability,  
12          publication in peer reviewed literature, and general acceptance." *Id.* (citation and  
13          internal quotation marks omitted). And where the witness "rel[ies] solely or  
14          primarily on experience, . . . witness must explain how that experience leads to the  
15          conclusion reached, why that experience is a sufficient basis for the opinion, and  
16          how that experience is reliably applied to the facts." Fed. R. Evid. 702 advisory  
17          committee's note to 2000 amendment.

18           The Rebuttal Reports simply do not reflect that Dr. Hagen properly applied  
19          her professional experience or reliable principles or methods to reach her  
20          conclusions. Her reports are from the "because I said so" school of expert opinion—  
21          which violates the Federal Rules of Evidence. Prior to writing the Rebuttal Reports,  
22          Dr. Hagen did not review any authorities or literature from her field except for the  
23          single study she cites only in the A.F.A.J. Rebuttal Report regarding the relationship  
24          between parental educational levels and child educational outcomes. *See* A.F.A.J.  
25          Rebuttal Report at 4; *see also* A.F.A.J. Rebuttal Report, Exhibit 1. Accordingly, the  
26          Rebuttal Reports generally lack citations to testable methodology, peer-reviewed  
27          studies, or other authoritative sources showing that Dr. Hagen used generally

1 accepted practices to derive her conclusions. Instead, her opinions are admittedly off  
2 the top of her head: the Rebuttal Reports are based purely on her review of portions  
3 of each Plaintiff's case file, which Defendant's counsel had selected and provided.

4 Because Dr. Hagen failed to properly apply her professional experience or  
5 a reliable method or principle when writing the Rebuttal Reports, the conclusions  
6 therein are unreliable. For example, in the Mr. Arredondo Rebuttal Report, Dr.  
7 Hagen states that Mr. Arredondo's current earning capacity is at the 25th percentile  
8 of wages for workers in the category of Maintenance and Repair Workers.  
9 Arredondo Rebuttal Report at 5-6. She anecdotally bases this opinion on Mr.  
10 Arredondo's work history, level of English-speaking ability, and lack of high school  
11 diploma. *Id.* Dr. Hagen does not explain what principle or methodology supports the  
12 finding that those three characteristics justify assessing Mr. Arredondo's earning  
13 potential at the 25th percentile. She expects to be believed because she said so. She  
14 fails to provide any sources or citations showing that the unidentified reasoning she  
15 used to reach this conclusion is reliable and generally accepted. She does not explain  
16 her exclusion of other relevant factors, including Mr. Arredondo's extensive  
17 experience in construction, his current skillset, or his strong work ethic. Thus, there  
18 is simply no way of knowing whether Dr. Hagen's assessment of Mr. Arredondo's  
19 earning potential has any validity.

20 As another example, in the A.F.A.J. Rebuttal Report, Dr. Hagen states that  
21 Mr. Lieberman's opinion that "A.F.A.J. will have low earnings due to her experience  
22 at the border . . . ignores other factors that affect her potential future earnings."  
23 A.F.A.J. Rebuttal Report at 5. The factors Mr. Lieberman allegedly ignored include  
24 A.F.A.J. not yet having any vocational skills and not yet graduating high school. *Id.*  
25 Mr. Lieberman, however, used a specific methodology—the PEEDS-RAPEL  
26 methodology—to form his opinion. PEEDS-RAPEL is a method specifically  
27 designed to evaluate the earnings capacity "where the plaintiff is of a young age and  
28

1 their academic, work, and earnings history may not be firmly established.” Mark  
2 Lieberman, *Employability Assessment* [REDACTED] at 7 (Dec. 22,  
3 2023). Dr. Hagen’s assertion disregards that Mr. Lieberman’s methodology  
4 considers the very factors she identifies as “ignored.” It is almost as if she did not  
5 actually read the Lieberman Report. To the extent her assertion could be construed  
6 as an attack of the PEEDS-RAPEL methodology, Dr. Hagen fails provide any  
7 sources or citations showing that the factors she identified are relevant to, but  
8 excluded from, the PEEDS-RAPEL methodology or that those factors were not  
9 properly considered in Mr. Lieberman’s application of that methodology. Instead,  
10 she simply states that the factors are relevant and that Mr. Lieberman failed to take  
11 them into account. These naked assertions do not satisfy Federal Rule of Evidence  
12 702.

13 The Rebuttal Reports are replete with unsupported conclusions based on  
14 unexplained methods and unjustified reasoning. Because the reports fail to  
15 demonstrate that their conclusions were properly derived using trustworthy  
16 techniques, the Court should exclude them.

17       2. Dr. Hagen Did Not Consider All Evidence She Reviewed and,  
18                   Instead, Only Considered the Evidence Favorable to  
19                   Defendant’s Position

20 “[C]ourts have consistently excluded expert testimony that ‘cherry-picks’  
21 relevant data.” *EEOC v. Freeman*, 778 F.3d 463, 469 (4th Cir. 2015) (collecting  
22 cases). Conclusions based on “rejecting or ignoring the great weight of the evidence  
23 that contradicts [the expert’s] conclusion” are inadmissible because such  
24 conclusions “do[] not reflect scientific knowledge, [are] not derived by the scientific  
25 method, and [are] not ‘good science.’” See *In re Bextra & Celebrex Mktg. Sales*  
26 *Practices & Prod. Liab. Litig.*, 524 F. Supp. 2d 1166, 1176 (N.D. Cal. 2007).

1 Dr. Hagen's opinion that Mr. Lieberman should not have treated Plaintiffs as  
2 having a [REDACTED] is based on impermissible cherry-picking. In the  
3 Arredondo Rebuttal Report, Dr. Hagen disagrees "with Mr. Lieberman describing  
4 Mr. Arredondo as having a [REDACTED]." Arredondo Rebuttal Report at 5.  
5 Dr. Hagen notes that Mr. Lieberman had written that "Mr. Arredondo's issues due  
6 to his [REDACTED] would be consistent with the category of [REDACTED]," and she  
7 objects to this assessment based solely on the fact that Dr. Williamson told her that  
8 "Mr. Arredondo does not meet the criteria for a diagnosis of [REDACTED] nor a [REDACTED]  
9 [REDACTED]." *Id.* Similarly, in A.F.A.J.'s Rebuttal Report, Dr. Hagen disagrees with Mr.  
10 Lieberman's treatment of A.F.A.J. as having a [REDACTED] because, during  
11 their eight-minute conversation, "Dr. Williamson related to me that she does not  
12 have a [REDACTED]." A.F.A.J. Rebuttal Report at 5-6.

13 However, Dr. Hagen fails to mention or consider that multiple mental health  
14 professionals—including Dr. Kristin Samuelson, Dr. Amy Cohen (a Board-certified  
15 psychiatrist), and Mr. Genaro Rodriguez (a licensed therapist)—had independently  
16 concluded that one or both Plaintiffs displayed symptoms consistent with [REDACTED]. See  
17 Kristin W. Samuelson, *Forensic Psychological Evaluation of [REDACTED]*  
18 [REDACTED] at 22 (Dec. 22, 2023); Kristin W. Samuelson, *Forensic*  
19 *Psychological Evaluation of Fernando Arredondo* at 16 (Dec. 22, 2023); Genaro  
20 Rodriguez, *Psychological Evaluation of [REDACTED]* at 3  
21 (June 2, 2020); Amy J. Cohen, *Psychological Evaluation of Esvin Fernando*  
22 *Arredondo Rodriguez* at 12 (June 20, 2020).

23 Dr. Hagen was well aware of these other psychologists' conclusions; she  
24 listed their reports in the "Documents Reviewed" sections of the Rebuttal Reports.  
25 Arredondo Rebuttal Report at 1; A.F.A.J. Rebuttal Report at 1. And the conclusions  
26 were clearly relevant to the issue at hand; they relate directly to Mr. Lieberman's  
27 conclusion that Plaintiffs suffered from symptoms of [REDACTED], which qualify as a  
28

1 [REDACTED]. The Rebuttal Reports nevertheless fail to acknowledge, let alone  
2 justify, the omission of these opposing opinions.

3 In fact, rather than engaging with the fact that multiple medical professionals  
4 had determined that Plaintiffs suffer from symptoms of [REDACTED], Dr. Hagen instead  
5 obfuscates this fact. Dr. Hagen writes in the Rebuttal Reports that Mr. Lieberman  
6 lacked a valid basis to treat Plaintiffs as having a [REDACTED] because no  
7 psychologist or therapist had diagnosed them as such. Arredondo Rebuttal Report at  
8 5; A.F.A.J. Rebuttal Report at 5. She ignores, however, that Mr. Lieberman clearly  
9 stated that the term “[REDACTED]” “do[es] not represent any medical defined  
10 definition of [REDACTED].” Mark Lieberman, *Employability Assessment Esvin*  
11 *Fernando Arredondo Rodriguez* at 17 (Dec. 22, 2023). Instead, the term is defined  
12 in the American Community Survey and means “[REDACTED]  
13 [REDACTED]  
14 [REDACTED]” *Id.* And Mr. Lieberman assessed Mr. Arredondo and A.F.A.J. as having  
15 a [REDACTED] based on the multiple mental health professionals’ conclusions  
16 that Plaintiffs suffered [REDACTED] consistent with [REDACTED], including  
17 [REDACTED]. See Mark Lieberman, *Employability*  
18 *Assessment Esvin Fernando Arredondo Rodriguez* at 12 (Dec. 22, 2023); Mark  
19 Lieberman, *Employability Assessment* [REDACTED] at 6 (Dec. 22,  
20 2023). Thus, Dr. Hagen’s statement that no psychologist had diagnosed either  
21 Plaintiff with a [REDACTED] confuses Mr. Lieberman’s use of the term  
22 “[REDACTED]” with a medical diagnosis and wrongly implies that no qualified  
23 persons have found that Plaintiffs suffer from [REDACTED].

24 In short, Dr. Hagen’s selective and argumentative use of the evidence renders  
25 her opinion on Plaintiffs’ [REDACTED] inadmissible. Her refusal to engage  
26 with facts unfavorable to Defendant supports that she wrote the Rebuttal Reports to  
27 support a specific, predetermined conclusion—that Plaintiffs’ did not have any

1 [REDACTED] and chose to only present facts supporting that conclusion.  
2 Such cherry-picking produces unreliable opinions and justifies excluding Dr.  
3 Hagen's testimony on this issue.

4 **IV. CONCLUSION**

5 Dr. Hagen's reports, opinions, and testimony should be excluded under  
6 Federal Rule of Evidence 702: they are not based on sufficient facts or data, are not  
7 the product of reliable methodologies, and do not reflect the reliable application of  
8 methodology to the facts in issue. We respectfully request that the Court exclude Dr.  
9 Hagen's reports, opinions, and testimony in their entirety.

10

11

12

13

14

Dated: February 23, 2024

Respectfully Submitted,

**MILBANK LLP**

15

16

17

By: /s/ Linda Dakin-Grimm

Linda Dakin-Grimm (State Bar #119630)

LDakin-grimmm@milbank.com

18

19

20

21

22

23

24

Mark Shinderman (State Bar #136644)

MShinderman@milbank.com

Samir L. Vora (State Bar #253772)

SVora@milbank.com

Marina Markarian (State Bar #340686)

MMarkarian@milbank.com

2029 Century Park East, 33rd Floor

Los Angeles, CA 90067

Telephone: 424-386-4000

Facsimile: 213-629-5063

25

26

27

28

Elizabeth Hamilton, *pro hac vice*

EHamilton@milbank.com

55 Hudson Yards

New York, New York 10001

-12-

1 Telephone: 212-530-5000  
2 Facsimile: 212-530-5219

3 Julie Wolf, *pro hac vice*  
4 JWolf@milbank.com  
5 Julia Duke, *pro hac vice*  
6 JDuke@milbank.com  
7 Riah Kim, *pro hac vice*  
8 RKim2@milbank.com  
9 Victoria Colbert, *pro hac vice*  
10 VColbert@milbank.com  
11 Jonghyun Lee, *pro hac vice*  
12 JLee7@milbank.com  
13 1850 K Street NW, Suite 1100  
14 Washington, DC 20006  
15 Telephone: 202-835-7500  
16 Facsimile: 202-263-7586

17  
18 *Pro Bono* Attorneys for Plaintiffs,  
19 Esvin Fernando Arredondo Rodriguez and  
20 A.F.A.J.  
21  
22  
23  
24  
25  
26  
27  
28

1                   **Certificate of Compliance Pursuant to L.R. 11-6.2**

2                   The undersigned, counsel of record for Plaintiffs Esvin Fernando Arredondo  
3                   Rodriguez and A.F.A.J certifies that this brief contains 3,511 words, which  
4                   complies with the word limit of L.R. 11-6.1.

5  
6                   Dated: February 23, 2024

By: /s/ *Victoria Colbert*  
Victoria Colbert

7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28